UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
BRANDENBURG, WILLIAM A

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/605,242	NEWMAN, KURT
	Examiner	**Art Unit**	
	WILLIAM A. BRANDENBURG	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>05 January 2010</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-48</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-48</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The following is a Final Office Action in response to
communications received on 01/05/2010. Claims 49-52 have been
cancelled. Claims 1 and 17-48 have been amended. No claims
have been added. Therefore, claims 1-48 are pending and
addressed below.

Claim Objections

2.   The amendment filed on 01/05/2010, has corrected the claim
objections identified in the Office Action dated 10/05/2009.
Thus, the Examiner hereby withdraws the claim objections of
claims 18, 21, 25-27, 29-31, 41-42, 44-48 and 49-52 that were
raised in the Office Action dated 10/05/2009.

Claim Rejections - 35 USC § 112

3.   The amendment filed on 01/05/2010, has corrected the 35
U.S.C. 112 deficiencies identified in the Office Action dated
10/05/2009. Thus, the Examiner hereby withdraws the 35 U.S.C.
112 second paragraph rejections of claim 13 that was raised in
the Office Action dated 10/05/2009.

The following is a quotation of the first paragraph of 35

U.S.C. 112:

> The specification shall contain a written description of the invention, and
> of the manner and process of making and using it, in such full, clear,
> concise, and exact terms as to enable any person skilled in the art to
> which it pertains, or with which it is most nearly connected, to make and
> use the same and shall set forth the best mode contemplated by the inventor
> of carrying out his invention.

4.   Claims 1 and 43 are rejected under 35 U.S.C. 112, first

paragraph, as failing to comply with the written description

requirement. The claim(s) contains subject matter which was

not described in the specification in such a way as to

reasonably convey to one skilled in the relevant art that the

inventor(s), at the time the application was filed, had

possession of the claimed invention.

Claim 1 recites the following: "...wherein the at least one

treatment comprises a plurality of different treatments..."

and "...wherein the at least one channel comprises a plurality

of different channels..." These recited features contain

subject matter that is not described or supported anywhere in

the Applicant's specification. Aside from these claim elements

not being described in the specification, the Examiner notes

that these same claim elements are also subject to a 112 2nd

paragraph rejection for being indefinite as detailed below.

Similar reasoning can be used for claim 43 and is rejected

accordingly.

The following is a quotation of the second paragraph of 35

U.S.C. 112:

> The specification shall conclude with one or more claims particularly
> pointing out and distinctly claiming the subject matter which the applicant
> regards as his invention.

5.   Claims 1, 17 and 43 are rejected under 35 U.S.C. 112,

second paragraph, as being indefinite for failing to

particularly point out and distinctly claim the subject matter

which applicant regards as the invention.

Claim 1 recites the following: "<u>defining at least one</u>

<u>treatment</u>, wherein the at least one treatment comprises a

plurality of different treatments..." and "<u>selecting at least</u>

<u>one channel</u>, wherein the at least one channel comprises a

plurality of different channels..." *(emphasis added)* Claim 1

further recites "applying the plurality of different

treatments to the plurality of different selected channels..."

As per the first set of recitations, it is unclear to the

Examiner how one treatment can comprise of a plurality of

different treatments and one channel can comprise of a

plurality of different channels. The Examiner notes there is either only one treatment and one channel, or there are multiple treatments and multiple channels; there cannot be both.

As per the second recitation, the preceding limitations have only required one to define "one treatment" and select "one channel". As such, it is unclear to the Examiner how the third limitation is applying the plurality of different treatments to the plurality of different selected channels.

As such, claim 1 is rejected for being indefinite. See MPEP 2173.

For the purposes of examination, the Examiner will interpret that there can be a plurality of treatments and a plurality of channels and the plurality of treatments can be applied in various ways to various channels, however, all that is required of claim 1 is to define one treatment and select one channel. As such, the "applying" step must be interpreted as applying the one treatment to the selected channel.

Similar reasoning can be used for claim 43 and is rejected accordingly.

Claim 17 recites the limitation "the at least channel" in the second element of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

6.   The amendment filed on 01/05/2010, has corrected the 35

U.S.C. 101 deficiencies identified in the Office Action dated

10/05/2009. Thus, the Examiner hereby withdraws the 35 U.S.C.

101 rejections of claims 43-48 that were raised in the Office

Action dated 10/05/2009.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which

forms the basis for all obviousness rejections set forth in this

Office action:

> (a) A patent may not be obtained though the invention is not identically
> disclosed or described as set forth in section 102 of this title, if the
> differences between the subject matter sought to be patented and the prior
> art are such that the subject matter as a whole would have been obvious at
> the time the invention was made to a person having ordinary skill in the
> art to which said subject matter pertains. Patentability shall not be
> negatived by the manner in which the invention was made.

7.   **Claims 1-23 and 43-48 are rejected under 35 U.S.C. 103(a)**

as being unpatentable over Louviere et al. (US 6,934,748 B1)

(hereinafter Louviere).

8.   As per claim 1 (and similarly the computer-readable medium

    (col. 3, line 34 – col. 4, line 22) of claim 43), Louviere

    discloses a method to apply different treatments, comprising:

        defining at least one treatment, wherein the at least one

    treatment comprises a plurality of different treatments, each

    of the plurality of different treatments being different from

    each other (col. 5, line 9 – col. 6, line 35, see also col.

    15, line 20 - col. 18, line 14, see also col. 23, line 50 –

    col. 26, line 65) (The Examiner notes the provided recitations

    disclose multiple treatments, however, as noted in the 112 2nd

    rejection, one treatment cannot comprise a plurality of

    different treatments. Furthermore, all that is required by the

    claim language is to define at least <u>one treatment</u>. As such,

    the limitation has been satisfied in accordance with the 112

    2nd rejection.);

        selecting at least one channel, wherein each of the at

    least channel comprises a specific medium of communication

    (col. 5, line 9 – col. 6, line 35, see also col. 15, line 20 -

    col. 18, line 14, see also col. 23, line 50 – col. 26, line

    65) (The Examiner understands that as these recitations

    disclose experimenting with multiple different treatments to

    gauge the reaction of users via a designed experiment, a

    channel (i.e. webpage with the specific medium of

communication being the Internet) has indeed been selected. As

such, this limitation has been satisfied.),

applying the plurality of different treatments to the

plurality of different selected channels such that each

different selected channel has a different treatment applied

thereto and associated therewith so as to evaluate the impact

that each different treatment has to each different, selected

channel (col. 5, line 9 - col. 6, line 35, see also col. 15,

line 20 - col. 18, line 14, see also col. 23, line 50 - col.

26, line 65) (The Examiner notes the provided recitations

disclose multiple treatments being applied to the selected

channel (i.e. webpage) to gauge the reaction of users via a

designed experiment, however, as noted in the 112 2nd

rejection, one channel cannot comprise a plurality of

different channels. Furthermore, all that is required by the

claim language is to define at least one treatment and apply

said treatment to the one selected channel. As such, the

limitation has been satisfied in accordance with the 112 2nd

rejection.).

Louviere does not explicitly disclose

wherein the at least one channel comprises a plurality of

different channels, each of the plurality of different

channels being different from each other, at least one medium
of communication comprising a non-webpage medium.

However, Louviere does teach other communication networks and
mediums in addition to Internet (i.e. webpage) mediums such as
telephone call centers, automated teller machine (ATM)
networks, instant messaging systems, interactive televisions
services, etc. (col. 6, lines 36-51). Furthermore, Louviere
teaches that although particular embodiments of the present
invention have been shown and described, it will be obvious to
those skilled in the art that changes or modifications may be
made without departing from the present invention in its
broader aspects (col. 27, lines 58-62).

It would have been obvious to one of ordinary skill in the art
at the time of the invention to modify Louviere to include a
plurality of different channels comprising non-webpage mediums
of communication. The rationale for this inclusion is that
there are a limited number of predictable communication
mediums one could experiment with by applying different
treatments to gauge user reaction, among which includes non-
webpage mediums. Moreover, common sense dictates that more
channels used in the experimentation would yield even more

results that could be used to further optimize and target the

content in question. The Examiner notes the teachings of

Louviere clearly teach that other channels could very well be

selected instead of webpages and used in a similar manner,

thereby satisfying the plurality of channels limitation.

9.   As per claim 2, Louviere discloses the method of claim 1

(as rejected above). Louviere further discloses wherein

defining the at least one treatment comprises

    defining one of a content treatment and an auxiliary

content treatment (col. 5, line 9 – col. 6, line 35, see also

col. 15, line 20 – col. 18, line 14, see also col. 23, line 50

– col. 26, line 65).

10.   As per claim 3, Louviere discloses the method of claim 2

(as rejected above). Louviere further discloses wherein

applying the auxiliary content treatment comprises

    applying a predetermined treatment in response to a

conditional logic statement (col. 15, line 20 – col. 18, line

14, see also col. 23, line 50 – col. 26, line 65).

11.   As per claim 4, Louviere discloses the method of claim 2

(as rejected above). Louviere further discloses further

comprising

applying the at least one content treatment or the

auxiliary content treatment according to a conditional logic

statement in response to the treatment being flagged as a rule

set (col. 15, line 20 - col. 18, line 14, see also col. 23,

line 50 - col. 26, line 65).

12.   As per claim 5 (and similarly the computer-readable medium

(col. 3, line 34 - col. 4, line 22) of claim 44), Louviere

discloses the method of claim 1 (as rejected above). Louviere

further discloses further comprising

applying the at least one treatment to a control point

associated with each selected channel (col. 5, line 9 - col.

6, line 35, see also col. 15, line 20 - col. 18, line 14, see

also col. 23, line 50 - col. 26, line 65).

13.   As per claim 6 (and similarly the computer-readable medium

(col. 3, line 34 - col. 4, line 22) of claim 45), Louviere

discloses the method of claim 1 (as rejected above). Louviere

further discloses wherein applying the at least one treatment

to the at least one selected channel comprises

at least one of applying at least one chosen treatment to a

web site, applying at least one chosen treatment to e-mail,

applying at least one chosen treatment to an automatic teller

(ATM) screen, applying at least one chosen treatment to an on-

hold telephone message, applying at least one chosen treatment

to direct mailing, applying at least one chosen treatment to

outbound telemarketing and applying at least one chosen

treatment to marketing a product or service (col. 5, line 9 -

col. 6, line 51, see also col. 23, line 50 - col. 26, line

65).

14. As per claim 7 (and similarly the computer-readable medium

(col. 3, line 34 - col. 4, line 22) of claim 46), Louviere

discloses the method of claim 1 (as rejected above). Louviere

further discloses further comprising

selecting at least one test cell including at least one

control point and at least one treatment associated with each

control point (col. 15, line 20 - col. 18, line 14, see also

col. 23, line 50 - col. 26, line 65).

15. As per claim 8, Louviere discloses the method of claim 7

(as rejected above). Louviere further discloses further

comprising

defining a plurality of test groups each comprising a
plurality of test cells (col. 17, lines 1-38, see also col.
23, line 50 - col. 26, line 65).

16.   As per claim 9 (and similarly the computer-readable medium
(col. 3, line 34 - col. 4, line 22) of claim 47), Louviere
discloses the method of claim 8 (as rejected above). Louviere
further discloses further comprising

defining at least one matrix, each matrix including
selected test groups of the plurality of test groups (col. 9,
line 1 - col. 10, line 29, see also col. 16, line 20 - col.
17, line 59).

17.   As per claim 10, Louviere discloses the method of claim 9
(as rejected above). Louviere further discloses further
comprising

defining a transition to a new matrix (col. 21, lines 20-
64).

18.   As per claim 11 (and similarly the computer-readable medium
(col. 3, line 34 - col. 4, line 22) of claim 48), Louviere
discloses the method of claim 9 (as rejected above). Louviere

further discloses wherein defining the transition to a new

matrix comprises:

selecting a percentage of each test group in a previous

matrix to be associated with each test group in the new matrix

(col. 21, lines 20-64); and

selecting a mapping path for each test group in the

previous matrix (col. 17, lines 1 - col. 18, line 43, see also

col. 21, lines 20-64).

19.   As per claim 12, Louviere discloses the method of claim 10

(as rejected above).

Louviere does not explicitly disclose further comprising

validating the new matrix.

However, Louviere does teach a prediction generator that

specifies particular segments for investigation and

optimization of content delivery. Users are search and

clustered together according to similarities and differences

in their characteristics and optimal content. These clustered

groups function as segments for implementing predictions (col.

21, lines 20-64, see also col. 13, lines 18-59). In addition,

Louviere teaches a scripting/scheduling engine that can

automatically control all functionality of the system. This

scripting/scheduling creates script to direct various elements

of the system to perform a particular action or set of

actions. Each script may include basic error handling

procedures (col. 14, line 46 - col. 15, line 15, see also col.

22, line 55 - col. 23, line 48).

It would have been obvious to one of ordinary skill in the art

at the time of the invention to modify Louviere to include

validating. The rationale for this inclusion is that there are

a limited number of predictable techniques one could perform

to prevent errors, one of which includes validating. The

Examiner notes that based on the teachings of Louviere with

regards to the automated error handling of system operations,

it would have been obvious to include the obvious variation of

validating of the instant invention.

20. As per claim 13, Louviere discloses the method of claim 12

     (as rejected above). Louviere further discloses further

     comprising

        updating output files for each channel according to the new

     matrix (col. 21, lines 20-64).

21. As per claim 14, Louviere discloses the method of claim 13

   (as rejected above). Louviere further discloses further

   comprising

      altering the channels in response to the new treatments

   associated with the new matrix (col. 5, line 9 – col. 6, line

   35, see also col. 15, line 20 – col. 18, line 14, see also

   col. 21, lines 20-64, see also col. 23, line 50 – col. 26,

   line 65).

22. As per claim 15, Louviere discloses the method of claim 1

   (as rejected above). Louviere further discloses wherein

   evaluating results comprises:

      accessing historical data related to treatments applied to

   different customers and segments of customers stored in a data

   source (col. 13, lines 20-59, see also col. 17, line 65 – col.

   18, line 14, see also col. 26, line 48 – col. 27, line 7);

      evaluating a margin of success or failure of each treatment

   applied to different segments and customers via different

   channels (col. 13, lines 20-59, see also col. 26, line 48 –

   col. 27, line 7); and

      adjusting practices or operations based on results of the

   evaluation (col. 13, lines 20-59, see also col. 20, lines 10-

   28, see also col. 26, line 48 – col. 27, line 47).

23.   As per claim 16, Louviere discloses the method of claim 1

(as rejected above). Louviere further discloses further

comprising

testing an effect of the application of the at least one

treatment to the at least one selected channel (col. 15, line

20 - col. 18, line 14, see also col. 23, line 50 - col. 26,

line 65).

24.   As per claim 17, Louviere discloses a method to apply

different treatments, comprising:

accessing historical data related to treatments from a data

source (col. 13, lines 20-59, see also col. 17, line 65 - col.

18, line 14, see also col. 26, line 48 - col. 27, line 7);

evaluating a margin of success or failure of each

treatments applied to different segments via different

channels so as to evaluate the impact that each different

treatment has to each different channel (col. 13, lines 20-59,

see also col. 26, line 48 - col. 27, line 7), wherein the

treatments comprise a plurality of different treatments, each

of the plurality of different treatments being different from

each other (col. 5, line 9 - col. 6, line 35, see also col.

15, line 20 - col. 18, line 14, see also col. 23, line 50 -

col. 26, line 65) (The Examiner notes the provided recitations

disclose multiple treatments.), and wherein each of the at

least channel comprises a specific medium of communication

(col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 -

col. 18, line 14, see also col. 23, line 50 - col. 26, line

65) (The Examiner understands that as these recitations

disclose experimenting multiple different treatments to gauge

the reaction of users via a designed experiment, a channel

(i.e. webpage with the specific medium of communication being

the Internet) has indeed been selected. As such, this

limitations has been satisfied.); and

   adjusting practices or operations based on results of the

evaluation (col. 13, lines 20-59, see also col. 20, lines 10-

28, see also col. 26, line 48 - col. 27, line 47).

Louviere does not explicitly disclose

   wherein the different channels comprise a plurality of

different channels, each of the plurality of different

channels being different from each other.

However, Louviere does teach other communication networks and

mediums in addition to Internet (i.e. webpage) mediums such as

telephone call centers, automated teller machine (ATM)

networks, instant messaging systems, interactive televisions
services, etc. (col. 6, lines 36-51). Furthermore, Louviere
teaches that although particular embodiments of the present
invention have been shown and described, it will be obvious to
those skilled in the art that changes or modifications may be
made without departing from the present invention in its
broader aspects (col. 27, lines 58-62).

It would have been obvious to one of ordinary skill in the art
at the time of the invention to modify Louviere to include a
plurality of different channels. The rationale for this
inclusion is that there are a limited number of predictable
communication mediums one could experiment with by applying
different treatments to gauge user reaction, among which
includes webpages, non-webpage mediums, etc. Moreover, common
sense dictates that more channels used in the experimentation
would yield even more results that could be used to further
optimize and target the content in question. The Examiner
notes the teachings of Louviere clearly teach that other
channels could very well be selected instead of webpages and
used in a similar manner, thereby satisfying the plurality of
channels limitation.

25.   As per claim 18, Louviere discloses the method of claim 17

(as rejected above). Louviere further discloses further

comprising

applying at least one treatment to at least one selected

channel (col. 5, line 9 - col. 6, line 35, see also col. 15,

line 20 - col. 18, line 14, see also col. 23, line 50 - col.

26, line 65).

26.   As per claim 19, Louviere discloses the method of claim 18

(as rejected above). Louviere further discloses wherein

applying the at least one treatment to the at least one

selected channel comprises at least one of applying at least

one chosen treatment to a web site, applying at least one

chosen treatment to e-mail, applying at least one chosen

treatment to an automatic teller (ATM) screen, applying at

least one chosen treatment to a telephone answering menu

system and applying at least one chosen treatment to direct

mailing (col. 5, line 9 - col. 6, line 51, see also col. 23,

line 50 - col. 26, line 65).

27.   As per claim 20, Louviere discloses the method of claim 18

(as rejected above). Louviere further discloses wherein

applying the at least one treatment comprises

applying the at least one treatment to a control point

associated with each selected channel (col. 5, line 9 - col.

6, line 35, see also col. 15, line 20 - col. 18, line 14, see

also col. 23, line 50 - col. 26, line 65).

28. As per claim 21, Louviere discloses the method of claim 17

(as rejected above). Louviere further discloses further

comprising

selecting at least one test cell including at least one

control point and at least one treatment associated with each

control point (col. 15, line 20 - col. 18, line 14, see also

col. 23, line 50 - col. 26, line 65).

29. As per claim 22, Louviere discloses the method of claim 20

(as rejected above). Louviere further discloses further

comprising

defining a plurality of test groups each comprising a

plurality of test cells (col. 17, lines 1-38, see also col.

23, line 50 - col. 26, line 65).

30. As per claim 23, Louviere discloses the method of claim 22

(as rejected above). Louviere further discloses further

comprising

defining at least one matrix, each matrix including

selected test groups of the plurality of test groups (col. 9,

line 1 - col. 10, line 29, see also col. 16, line 20 - col.

17, line 59).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs

of 35 U.S.C. 102 that form the basis for the rejections under

this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published
> under section 122(b), by another filed in the United States before the
> invention by the applicant for patent or (2) a patent granted on an
> application for patent by another filed in the United States before the
> invention by the applicant for patent, except that an international
> application filed under the treaty defined in section 351(a) shall have the
> effects for purposes of this subsection of an application filed in the
> United States only if the international application designated the United
> States and was published under Article 21(2) of such treaty in the English
> language.

31. **Claims 24-42 are rejected under 35 U.S.C. 102(e) as being**

   anticipated by Louviere et al. (US 6,934,748 B1) (hereinafter

   Louviere).

32. As per claim 24, Louviere discloses a system to apply

   different treatments, comprising:

   a server (col. 4, lines 47-52); and

a test control system operating on the server to apply each

treatment selected from a plurality of treatments to a chosen

channel (Fig. 2, "12", see also col. 5, line 9 - col. 6, line

35, see also col. 15, line 20 - col. 18, line 14, see also

col. 23, line 50 - col. 26, line 65),

wherein each of the plurality of treatments are different

from each other (col. 5, line 9 - col. 6, line 35, see also

col. 15, line 20 - col. 18, line 14, see also col. 23, line 50

- col. 26, line 65) (The Examiner notes the provided

recitations disclose multiple treatments that are all

different from each other. As such, this limitation is

satisfied.),

wherein the chosen channel comprises a specific medium of

communication (col. 5, line 9 - col. 6, line 35, see also col.

15, line 20 - col. 18, line 14, see also col. 23, line 50 -

col. 26, line 65) (The Examiner understands that as these

recitations disclose experimenting multiple different

treatments to gauge the reaction of users via a designed

experiment, a channel (i.e. webpage with the specific medium

of communication being the Internet) has indeed been selected.

As such, this limitations has been satisfied.), and

wherein the plurality of treatments are applied to the

chosen channel so as to evaluate the impact that each

different treatment has on the chosen channel (col. 5, line 9

- col. 6, line 35, see also col. 15, line 20 - col. 18, line

14, see also col. 23, line 50 – col. 26, line 65) (The

Examiner understands that as these recitations disclose

experimenting multiple different treatments to gauge the

reaction of users via a designed experiment, a channel (i.e.

webpage with the specific medium of communication being the

Internet) has indeed been selected. As such, this limitations

has been satisfied.).

33. As per claim 25, Louviere discloses the system of claim 24

(as rejected above). Louviere further discloses further

comprising

   a data source to store the plurality of treatments (Fig. 2,

"24", see also col. 7, lines 42-67).

34. As per claim 26, Louviere discloses the system of claim 24

(as rejected above). Louviere further discloses further

comprising

   a data source to store historical data related to the

selected treatments applied to each chosen channel (Fig. 2,

"36", see also col. 13, lines 18-59).

35.   As per claim 27, Louviere discloses the system of claim 24

      (as rejected above). Louviere further discloses wherein

        each treatment comprises one of a content treatment and an

      auxiliary content treatment (col. 5, line 9 - col. 6, line 35,

      see also col. 15, line 20 - col. 18, line 14, see also col.

      23, line 50 - col. 26, line 65).

36.   As per claim 28, Louviere discloses the system of claim 27

      (as rejected above). Louviere further discloses wherein

        the auxiliary content treatment comprises a predetermined

      treatment applicable to the chosen channel in response to a

      conditional logic statement (col. 15, line 20 - col. 18, line

      14, see also col. 23, line 50 - col. 26, line 65).

37.   As per claim 29, Louviere discloses the system of claim 24

      (as rejected above). Louviere further discloses wherein

        a treatment flagged as a rule set is applicable to the

      chosen channel in response to a conditional statement

      associated with the rule set (col. 15, line 20 - col. 18, line

      14, see also col. 23, line 50 - col. 26, line 65).

38.   As per claim 30, Louviere discloses the system of claim 24

      (as rejected above). Louviere further discloses wherein

the chosen channel comprises at least one of a web site, e-

mail, automatic teller (ATM), on-hold message system,

electronic kiosk, outbound telemarketing system direct

mailing, marketing a product or service (col. 5, line 9 - col.

6, line 51, see also col. 23, line 50 - col. 26, line 65).

39.   As per claim 31, Louviere discloses the system of claim 24

(as rejected above). Louviere further discloses further

comprising

    at least one test cell defining at least one control point

associated with each chosen channel and at least one treatment

associated with each control point (col. 15, line 20 - col.

18, line 14, see also col. 23, line 50 - col. 26, line 65).

40.   As per claim 32, Louviere discloses the system of claim 31

(as rejected above). Louviere further discloses wherein

    the test control system comprises a data structure to

present a treatment graphical user interface (GUI) to a user

via a browser to create and edit selected treatments and to

select control points associated with each treatment (Fig. 2,

"38", see also col. 14, lines 9-36).

41.   As per claim 33, Louviere discloses the system of claim 31

     (as rejected above). Louviere further discloses wherein

       the test control system comprises a data structure to

     present a control point GUI to a user via a browser to create

     and edit control points (Fig. 2, "38", see also col. 14, lines

     9-36, see also col. 15, line 20 – col. 18, line 25, see also

     col. 23, line 57 – col. 24, line 5).

42.   As per claim 34, Louviere discloses the system of claim 31

     (as rejected above). Louviere further discloses wherein

       the test control system comprises a data structure to

     present a test cell GUI to a user via a browser to create test

     cells and select treatments to be associated with each test

     cell (Fig. 2, "38", see also col. 14, lines 9-36, see also

     col. 15, line 20 – col. 18, line 25, see also col. 23, line 57

     – col. 24, line 5).

43.   As per claim 35, Louviere discloses the system of claim 31

     (as rejected above). Louviere further discloses further

     comprising

       at least one test group including selected ones of a

     plurality of test cells (col. 17, lines 1-38, see also col.

     23, line 50 - col. 26, line 65).

44.   As per claim 36, Louviere discloses the system of claim 32

(as rejected above). Louviere further discloses wherein

the test control system comprises a data structure to

present a test groups GUI to a user via a browser to define

and edit each test group (Fig. 2, "38", see also col. 14,

lines 9-36, see also col. 15, line 20 – col. 18, line 25, see

also col. 23, line 57 – col. 24, line 5).

45.   As per claim 37, Louviere discloses the system of claim 35

(as rejected above). Louviere further discloses further

comprising

at least one test matrix including selected ones of a

plurality of test groups (col. 9, line 1 - col. 10, line 29,

see also col. 16, line 20 - col. 17, line 59).

46.   As per claim 38, Louviere discloses the system of claim 37

(as rejected above). Louviere further discloses wherein

the test control system comprises a data structure to

present a test matrix GUI to a user via a browser to create

and edit the test matrices (Fig. 2, "38", see also col. 14,

lines 9-36, see also col. 15, line 20 – col. 18, line 25, see

also col. 23, line 57 – col. 24, line 5).

47. As per claim 39, Louviere discloses the system of claim 38

     (as rejected above). Louviere further discloses wherein

        the test control system comprises a data structure to

     present a test groups selection GUI to the user via a browser

     to select test groups to be associated with each test matrix

     (Fig. 2, "38", see also col. 14, lines 9-36, see also col. 15,

     line 20 - col. 18, line 25, see also col. 23, line 57 - col.

     24, line 5).

48. As per claim 40, Louviere discloses the system of claim 38

     (as rejected above). Louviere further discloses wherein

        the test control system comprises a data structure to

     present a test matrix transition GUI to a user via a browser

     to select percentages of each test group of a prior test

     matrix to be transferred to each test group of a new test

     matrix and to select a mapping path for each test group and a

     channel to be associated with each test group (Fig. 2, "38",

     see also col. 14, lines 9-36, see also col. 15, line 20 - col.

     18, line 25, see also col. 21, lines 20-65, see also col. 23,

     line 57 - col. 24, line 5).

49. As per claim 41, Louviere discloses the system of claim 24

(as rejected above). Louviere further discloses further

comprising

   a control point to apply each treatment to the chosen ones

of the plurality of channels (col. 5, line 9 – col. 6, line

35, see also col. 15, line 20 – col. 18, line 14, see also

col. 23, line 50 – col. 26, line 65).

50. As per claim 42, Louviere discloses the system of claim 24

(as rejected above). Louviere further discloses further

comprising

   a data structure to generate a report of all customers

changing segments (col. 14, lines 1-23, see also col. 20,

lines 16-59, see also col. 22, lines 10-30).

Response to Arguments

51. Applicant's arguments filed 01/05/2010 have been fully

considered but they are not persuasive.

52. In the remarks, the Applicant argues the following with

respect to claim 1, **as amended**:

   (a) Louviere does not disclose "applying the plurality of

different treatments to the plurality of different selected

channels such that each different selected channel has a

different treatment applied thereto and associated therewith

so as to evaluate the impact that each different treatment has

to each different, selected channel." As previously discussed,

Louviere only deals with varying content only on <u>webpages</u>.

Louviere clearly does not disclose applying <u>different</u>

treatments to <u>different channels</u>; *and*

(b) Louviere does not disclose "selecting at least one

channel..." There is no selection process at all in Louviere.

In response to these arguments, the Examiner respectfully

disagrees.

53. Argument (a) is directed towards subject matter (i.e.

applying the plurality of different treatments to the

plurality of different selected channels) that is subject to a

112 2nd paragraph rejection fully detailed above. The Examiner

has addressed the limitations in question in accordance with

the 112 2nd paragraph rejection. Moreover, the Applicant's

argument that Louviere only deals with varying content only on

webpages and not applying different treatments to different

channels has been fully addressed via the obviousness

rejection detailed above. As such, the Examiner finds argument

(a) not persuasive.

As per argument (b), the Examiner notes the following recitations: (col. 5, line 9 – col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 – col. 26, line 65).

The Examiner understands that as these recitations disclose experimenting with multiple different treatments to gauge the reaction of users via a designed experiment, a channel (i.e. webpage with the specific medium of communication being the Internet) has indeed been selected. As such, this limitation has been satisfied. The Examiner finds argument (b) not persuasive.

54.   In the remarks, the Applicant argues the following with respect to claims 12-14:

(a) Claim 12 is directed to a specific, detailed feature of some embodiments of the invention of validating a new matrix. Louviere does not even suggest a matrix, much less validating a new matrix. This concept is not obvious to one of ordinary skilled in the art.

In response to these arguments, the Examiner respectfully disagrees.

55. As per the Applicant's specification, a matrix or test

matrix may refer to a collection of test groups that may be

associated with a specific channel and segment. The test

matrix may include a mixture of predictive test groups,

fractional test groups or fractional factorial test groups.

Each test group may be a specific experiment and test matrix

may have multiple experiments that may be executed

simultaneously ([0023]).

Based on this disclosure by the Applicant, the Examiner

contends this is exactly what Louviere implements. As

disclosed by Louviere, experiment engine functions to support

the creation and execution of one or more experiments to test

the behavior or reactions of users to particular content and

particular treatments. Experiments are dictated by rules and

the experiments may include full factorial experiments and

designed fractions of full factorial experiments (col. 9, line

1 - col. 10, line 29). Experiment manager object may generate

the content treatments to be delivered for each experiment and

determine the conditions for deliver (e.g. to whom and when).

To accomplish this, experiment manager object may use any or

all of the experiment engine functionality described herein

(e.g. tables, search algorithms, etc.) (col. 16, line 57 -

col. 18, line 25).

The Examiner understands these recitations to satisfy the
concept of a matrix, which was appropriately addressed in
claims 9 and 10. The Examiner notes that as per this
particular argument directed towards claim 12, the Examiner
applied an obviousness rejection in the previous Office Action
simply to address the concept of "validating", not for the
"matrix" concept.

Moreover, the Applicant appears to be making a conclusory
statement, which is absent of fact, that the concept in
question is not obvious to one of ordinary skilled in the art.
Simply because the Applicant makes this statement in no way
makes it true. Perhaps if the Applicant provided some factual
basis on why this concept would not be obvious to one of
ordinary skill in the art, or that the disclosures and/or
teachings of Louviere prohibit this concept from being
implemented, then the Examiner might have been persuaded.
However, absent these conditions, the Examiner is not
persuaded by this particular argument.

Conclusion

56. Applicant's amendment necessitated the new ground(s) of
rejection presented in this Office action. Accordingly, **THIS
ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is

reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action

is set to expire THREE MONTHS from the mailing date of this

action. In the event a first reply is filed within TWO MONTHS

of the mailing date of this final action and the advisory

action is not mailed until after the end of the THREE-MONTH

shortened statutory period, then the shortened statutory

period will expire on the date the advisory action is mailed,

and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In

no event, however, will the statutory period for reply expire

later than SIX MONTHS from the date of this final action.

57. Any inquiry concerning this communication or earlier

communications from the examiner should be directed to WILLIAM

A. BRANDENBURG whose telephone number is (571)270-5488. The

examiner can normally be reached on Monday-Thursday 6:30 am -

5:00 pm EST.

If attempts to reach the examiner by telephone are

unsuccessful, the examiner's supervisor, Eric Stamber can be

reached on (571)272-6724. The fax phone number for the

organization where this application or proceeding is assigned
is 571-273-8300.

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/W. A. B./
Examiner, Art Unit 3622

/John Van Bramer/
John Van Bramer
Primary Examiner, Art Unit 3622